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of the State of California
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3 California Department of Justice
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6 Attorneys for Complainant
7

8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the First Amended) NO. AC-95-17
Accusation Against:)
12) OAH NO. N-9609036
CHARLES GRADY MOYER)
13 243 Alicante Court)
Danville, CA 94526) STIPULATION IN
14 Certified Public Accountant) SETTLEMENT
Certificate No. CPA 26474)
15)
and)
16)
MOYER AND AQUINTO, CPA's)
17 243 Alicante Court)
Danville, CA 94526)
18 CHARLES MOYER, Partner)
DAVID AQUINTO, Partner)
19 Certified Public Accountant)
Partnership No. PAR 5539)
20)
Respondents.)
21)

22
23 IT IS HEREBY STIPULATED by and between Charles Grady
24 Moyer, and Moyer & Aquinto, CPA's, the respondents in this
25 proceeding, by and through their attorney, Gregory Dolton, and
26 the Board of Accountancy, State of California, by and through its
27 attorney, Jeanne C. Werner, Deputy Attorney General, that:

1 1. The First Amended Accusation in Case No. AC-95-17
2 is currently pending against Charles Grady Moyer and Moyer &
3 Aquinto, CPA's ("Respondents"), said First Amended Accusation
4 having been filed with the Board of Accountancy, Department of
5 Consumer Affairs of the State of California ("Board") on August
6 23, 1996. The First Amended Accusation replaced the Accusation
7 which was filed on August 7, 1995.

8 2. Carol B. Sigmann, Executive Officer of the Board,
9 is the Complainant in the First Amended Accusation, which was
10 filed and prosecuted solely in her official capacity.

11 3. Respondent Moyer is licensed by the Board under
12 Certified Public Accountant Certificate No. CPA 26474, which
13 license is in full force and effect and expires subject to
14 renewal November 1, 1997.

15 4. Respondent Moyer and Aquinto, CPA's, is licensed
16 by the Board under Certified Public Accountant Partnership
17 Certificate No. PAR 5539. The partners in said partnership are
18 Charles Grady Moyer, CPA No. 26474, and David Aquinto, CPA No.
19 34990. Said certificate is in full force and effect and expires
20 subject to renewal December 31, 1998.

21 5. The Board acquired jurisdiction over Respondents
22 because they are Board licensees and were served with a copy of
23 the Accusation and a copy of the First Amended Accusation and all
24 other documents required by Government Code sections 11503 and
25 11505. Respondent Charles Moyer has timely filed a Notice of
26 Defense on behalf of both licenses. A copy of the First Amended
27 Accusation is attached hereto as Exhibit A and incorporated

1 herein.

2 6. Respondent Moyer is represented by his attorney,
3 Gregory Dolton, Esq., COX, PADMORE, BUCHANAN & SHAKARCHY, with
4 whom Respondent has discussed the provisions and effects of this
5 stipulation.

6 7. Respondents understand the nature of the charges
7 alleged in the Accusation and that the charges and allegations,
8 if proven at hearing, constitute cause for imposing discipline
9 upon Respondent's Certified Public Accountant license as well as
10 the partnership certificate.

11 8. Respondent Moyer has been fully advised by his
12 counsel regarding his legal rights and the effects of this
13 stipulation. He is fully aware of his right to a hearing on the
14 charges contained in the Accusation, his right to confront and
15 cross-examine witnesses against him, his right to
16 reconsideration, appeal, and any and all other rights which may
17 be accorded him under the California Administrative Procedure Act
18 (Gov. Code, § 11500 et seq.) and, with this in mind, freely and
19 voluntarily waives such rights.

20 9. Respondents understand that in signing this
21 stipulation rather than contesting the First Amended Accusation,
22 they are enabling the Board to issue the following order without
23 further legal process.

24 10. It is acknowledged by the parties that this
25 stipulation constitutes an offer in settlement to the Board and
26 is not effective until adoption by the Board.

27 11. In the event this stipulation is not adopted by

1 the Board, nothing herein recited shall be construed as a waiver
2 of Respondents' right to a hearing or as an admission of the
3 truth of any of the matters charged in the First Amended
4 Accusation.

5 12. Respondents hereby surrender Certified Public
6 Accountant Certificate CPA 26474 and Certified Public Accountant
7 Partnership Certificate No. PAR 5539 subject to the Board's
8 formal acceptance of said surrender. Upon acceptance of the
9 stipulation and surrender by the Board, Respondents agree to
10 surrender and cause to be delivered to the Board their licenses
11 and wallet certificates. Respondent Moyer further understands
12 that when the Board accepts the surrender of his certificate, he
13 will no longer be permitted to practice as a certified public
14 accountant in California.

15 13. Respondents understand that, by virtue of this
16 written stipulation, the Board may issue an order accepting the
17 surrenders on these conditions without further legal process.

18 14. Respondent Moyer fully understands and agrees
19 that, in acting upon any application for licensure, relicensure
20 or reinstatement which Respondent ever files in the state of
21 California or in any other state, the licensing entity shall deem
22 all of the charges and allegations contained in the First Amended
23 Accusation No. AC-95-17 to be true and correct and admitted by
24 Respondent Moyer. Further, Respondent Moyer stipulates that the
25 Board's costs of investigation and prosecution in this case were
26 \$7027.87 and stipulates that, in acting upon any application for
27 licensure, relicensure or reinstatement which Respondent ever

1 files in the State of California, the Board may impose, as a
2 condition of licensure, relicensure, or reinstatement, full
3 payment of these costs.

4
5 DATED:

gaw
April 30, 1997

DANIEL E. LUNGREN, Attorney General
of the State of California

Jeanne C. Werner

JEANNE C. WERNER
Deputy Attorney General

Attorneys for Complainant

10
11 DATED:

April 18, 1997

Gregory Dolton

GREGORY DOLTON, ESQ.
~~Cox, Padmore, Buchanan & Shakarchy~~
~~755 Page Mill Road, Suite A200~~
~~Palo Alto, CA 94304~~

Attorney for Respondents

16 I, Charles Grady Moyer, hereby certify that I have read
17 this stipulation and agreement in its entirety, that I fully
18 understand the legal significance and consequences thereof and
19 agree to be bound thereby, and in witness thereof I affix my
20 signature.

21 DATED:

4/29/97

Charles Grady Moyer
Charles Grady Moyer
Respondent
CPA Certificate 26474

24 DATED:

4/29/97

Charles Grady Moyer for
Charles Grady Moyer for
Respondent Moyer & Aquinto, CPA's
PAR Certificate 5539


27
Attachment: First Amended Accusation No. AC-95-17

1 DECISION AND ORDER
2 OF THE BOARD

3 The foregoing Stipulation in Settlement, in the First
4 Amended Accusation No. AC-95-17, is hereby adopted as the
5 Decision of the California Board of Accountancy.

6 An effective date of JUNE 19, 1997, has been
7 assigned to this Decision and Order.

8 Made this 20 th day of MAY, 1997.

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11 ROBERT J. SHACKLETON
12 Board President
13 For The Board of Accountancy
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EXHIBIT A

DANIEL E. LUNGREN, Attorney General
of the State of California
JEANNE COLLETTE WERNER
Deputy Attorney General, State Bar No. 93170
Department of Justice
2101 Webster Street, 12th Floor
Oakland, California 94612-3049
Telephone: (510) 286-3787

Attorneys for Complainant

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation) NO. AC-95-17
Against:)

CHARLES GRADY MOYER)
243 Alicante Court)
Danville, CA 94526)
Certified Public Accountant)
Certificate No. CPA 26474)

and)

MOYER & AQUINTO, CPA'S)
243 Alicante Court)
Danville, CA 94526)
CHARLES MOYER, Partner)
DAVID AQUINTO, Partner)
Certified Public Accountant)
Partnership No. PAR 5539)

Respondents.)

Complainant Carol Sigmann, as cause for disciplinary
action, alleges:

1. Complainant is the Executive Officer of the
California Board of Accountancy ("Board") and makes and files,
solely in her official capacity, this amended accusation, to

1 replace *nunc pro tunc* the accusation previously filed in this
2 matter.

3 LICENSE INFORMATION

4 2. On or about July 28, 1978, Certified Public
5 Accountant Certificate No. CPA 26474 was issued by the Board to
6 Charles Grady Moyer ("respondent"). Said certificate expired on
7 November 1, 1991, because the renewal fee and evidence of
8 compliance with continuing education requirements were not
9 submitted. Said certificate was not valid from November 1, 1991,
10 until its renewal effective July 31, 1992. The license is
11 currently valid through October 31, 1997.

12 3. On or about December 27, 1990, Certificate No.
13 5539 (Certified Public Accountant Partnership) was issued by the
14 Board to Moyer & Aquinto CPA's (Bus. & Prof. Code Sec. 5072).
15 Charles Grady Moyer (CPA No. 26474) and David Aquinto (CPA No.
16 34990) are shown as partners of Moyer & Aquinto CPA's. Said
17 certificate lapsed on December 31, 1991, and was renewed August
18 12, 1992. The license again lapsed on December 31, 1994, and was
19 renewed April 25, 1995, and is current through December 31, 1996.

20 4. The Board does not have a record of licensure for
21 MOYER AND AQUINTO ACCOUNTANCY CORPORATION.

22 STATUTES AND REGULATIONS

23 5. California Business and Professions Code ("Code")
24 section 5100 provides that the Board may revoke, suspend or
25 refuse to renew any permit or certificate issued by the Board for
26 unprofessional conduct which includes, but is not limited to, one
27 or any combination of the following:

1 (f) the willful violation of the Accountancy Act or any
2 rule or regulation promulgated by the Board;

3 (h) fiscal dishonesty or breach of fiduciary responsibility
4 of any kind;

5 (j) embezzlement, theft, misappropriation of funds or
6 property, or obtaining money, property or other valuable
7 consideration by fraudulent means or false pretenses.

8 6. Code section 5050 provides that no person shall
9 engage in the practice of public accountancy in California unless
10 the person holds a valid permit to practice public accountancy
11 issued by the Board. Code section 5051 sets forth the definition
12 of "public accountancy."

13 7. Code section 5101 provides for the discipline of a
14 partnership registration for the causes enumerated in Code
15 section 5100 or for the revocation or suspension of the
16 certificate or registration of any partner.

17 8. Code sections 5150 through 5158 set forth
18 requirements for practice as an accountancy corporation. Code
19 section 5156 provides that an "accountancy corporation shall not
20 do or fail to do any act the doing of which or the failure to do
21 which would constitute unprofessional conduct under any statute,
22 rule or regulation...(and the) board shall have the same powers
23 of suspension, revocation and discipline against an accountancy
24 corporation as are now or hereafter authorized..."

25 9. Code section 5107 provides, in part, that the
26 Board may request the administrative law judge, as part of the
27 proposed decision in a disciplinary proceeding, to direct any

1 holder of a permit or certificate found in violation of Code
2 section 5100(a), (b), (c), (h), (i) or (j), to pay to the Board
3 all reasonable costs of investigation and prosecution of the
4 case, including, but not limited to, attorney's fees. A
5 certified copy of the actual costs, or a good faith estimate of
6 costs where actual costs are not available, signed by the
7 executive officer, shall be prima facie evidence of reasonable
8 costs of investigation and prosecution of the case.

9 CAUSES FOR DISCIPLINE

10 10. Respondent Charles Grady Moyer is subject to
11 disciplinary action pursuant to Code section 5100 in that, on
12 December 28, 1990, respondent borrowed \$15,000 from Nino and
13 Tillie Gianelli, who were clients of respondent's accounting
14 practice. Respondent promised that the sum would be repaid by
15 February 1, 1991, at an interest rate of 12% per annum, said
16 terms being described on a promissory note. Respondent claims to
17 have repaid approximately \$5,000 of the debt.

18 At the time the loan was made, respondent had financial
19 difficulties and obligations which were not disclosed to the
20 Gianellis and which may have affected their decision to loan
21 respondent the money, based upon a more informed assessment of
22 respondent's financial history, including his resources and
23 outstanding obligations. The Gianellis sued respondent in Contra
24 Costa County Municipal Court of California, Walnut Creek-Danville
25 Judicial District, in Case No. 53393. The stipulated judgment
26 entered on December 31, 1992, awarded the Gianellis \$10,286.19,
27 and further stipulated that the judgment is for money obtained by

1 actual fraud and false pretenses within the meaning of 11 U.S.C.
2 § 532(a)(2)(A).

3 11. As a result of the conduct described in paragraph
4 10 above, respondent's license is subject to discipline on the
5 basis of his fiscal dishonesty and/or breach of fiduciary
6 responsibility pursuant to Code section 5100(h).

7 12. As a result of the conduct described in paragraph
8 10 above, respondent's license is subject to discipline on the
9 basis of his having obtained the loan by false pretenses in
10 violation of Code section 5100(j).

11 13. As a result of the conduct described in paragraph
12 10 above, respondent's license is subject to discipline on the
13 basis of his conduct constituting unprofessional conduct in
14 violation of Code section 5100.

15 FOR FURTHER CAUSES FOR DISCIPLINE

16 14. Respondent Charles Grady Moyer is subject to
17 discipline under Code section 5050 in conjunction with Code
18 section 5100 in that he practiced public accountancy during a
19 nine-month period, from November 1, 1991 through August 6, 1992,
20 when his license was in a delinquent status.

21 15. Respondent Charles Grady Moyer is subject to
22 discipline under Code section 5100 in conjunction with Code
23 section 5150 in that respondent has represented himself as being
24 part of Moyer and Aquinto Accountancy Corporation, although the
25 corporation is registered neither with the Board nor the
26 Secretary of State.

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1 FOR CAUSES FOR DISCIPLINE OF THE PARTNERSHIP

2 16. Respondent Moyer & Aquinto, CPA's is subject to
3 discipline under Code section 5100 in conjunction with Code
4 section 5150 in that Moyer & Aquinto, CPA's used a corporate
5 designation in doing business, which designation was registered
6 neither with the Board nor the Secretary of State.

7 17. In the event that revocation or suspension is
8 imposed upon the license of partner Charles Grady Moyer as a
9 result of these proceedings, said imposition of discipline
10 provides cause under Code section 5101 for the discipline of the
11 partnership registration and permit to practice.

12 PRAYER

13 WHEREFORE, complainant requests that the Board hold a
14 hearing on the matters alleged herein, and that following said
15 hearing, the Board issue a decision:

- 16 1. Revoking or suspending Certified Public Accountant
17 Certificate Number CPA 26474, heretofore issued to
18 respondent Charles Grady Moyer;
19 2. Revoking or suspending Certified Public Accountant
20 Partnership registration and permit to practice
21 No. PAR 5539;
22 3. Awarding the Board costs as provided by statute;
23 and

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DATED: August 23, 1996

Complainant

COJEANNE MOYERAND.ACC
(6 26/86)

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 JEANNE COLLETTE WERNER
Deputy Attorney General, State Bar No. 93170
3 Department of Justice
2101 Webster Street, 12th Floor
4 Oakland, California 94612-3049
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5 Attorneys for Complainant
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8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation) NO. AC-95-17
Against:)

12 CHARLES GRADY MOYER) ACCUSATION
13 3180 Crow Canyon Place #255)
San Ramon, CA 94583-1339)

14 Certified Public Accountant)
15 Certificate No. CPA 26474)

16 and)

17 MOYER & AQUINTO, CPA'S)
3180 Crow Canyon Place #255)
18 San Ramon, CA 94583-1339)
CHARLES MOYER, Partner)
19 DAVID AQUINTO, Partner)
Certified Public Accountant)
20 Partnership No. PAR 5539)

21 Respondents.)
22

23 Complainant Carol Sigmann, as cause for disciplinary
24 action, alleges:

25 1. Complainant is the Executive Officer of the
26 California Board of Accountancy ("Board") and makes and files
27 this accusation solely in her official capacity.

LICENSE INFORMATION

2. On or about July 28, 1978, Certified Public Accountant Certificate No. CPA 26474 was issued by the Board to Charles Grady Moyer ("respondent"). Said certificate expired on November 1, 1991, because the renewal fee and evidence of compliance with continuing education requirements were not submitted. Said certificate was not valid from November 1, 1991, until its renewal effective July 31, 1992. The license is currently valid through October 31, 1995.

3. On or about December 27, 1990, Certificate No. 5539 (Certified Public Accountant Partnership) was issued by the Board to Moyer & Aquinto CPA's (Bus. & Prof. Code Sec. 5072). Charles Grady Moyer (CPA No. 26474) and David Aquinto (CPA No. 34990) are shown as partners of Moyer & Aquinto CPA's. Said certificate lapsed on December 31, 1991, and was renewed August 12, 1992. The license again lapsed on December 31, 1994, and was renewed April 25, 1995.

The address of record for the partnership is 3180 Crow Canyon Place, Suite 255, San Ramon, CA 94583. The license is currently valid through December 31, 1996.

4. The Board of Accountancy does not have a record of licensure for MOYER AND AQUINTO ACCOUNTANCY CORPORATION.

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1 Section 5156 provides that an "accountancy corporation shall not
2 do or fail to do any act the doing of which or the failure to do
3 which would constitute unprofessional conduct under any statute,
4 rule or regulation...(and the) board shall have the same powers
5 of suspension, revocation and discipline against an accountancy
6 corporation as are now or hereafter authorized...".

7 9. Code Section 5107 provides, in part, that the Board
8 may request the administrative law judge, as part of the proposed
9 decision in a disciplinary proceeding, to direct any holder of a
10 permit or certificate found in violation of section 5100 (a),
11 (b), (c), (h), (i) or (j), to pay to the Board all reasonable
12 costs of investigation and prosecution of the case, including,
13 but not limited to, attorney's fees. A certified copy of the
14 actual costs, or a good faith estimate of costs where actual
15 costs are not available, signed by the executive officer, shall
16 be prima facie evidence of reasonable costs of investigation and
17 prosecution of the case.

18 10. The Board's regulations, codified in Title 16 of
19 the California Code of Regulations, provide, in Section 60¹,
20 that a licensee shall not engage in conduct which constitutes
21 fiscal dishonesty or breach of fiduciary responsibility of any
22 kind.

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27 1. The Board's rules, codified at Title 16 of the
California Code of Regulations in Sections 1-99, are hereinafter
referred to as "Board Rule." Thus, Section 60 is Board Rule 60.

CAUSES FOR DISCIPLINE

11. Respondent Charles Grady Moyer is subject to disciplinary action pursuant to Section 5100 in that, on December 28, 1990, respondent borrowed \$15,000 from Nino and Tillie Gianelli, who were clients of respondent's accounting practice. Respondent promised that the sum would be repaid by February 1, 1991, at an interest rate of 12% per annum, said terms being described on a promissory note. Moyer used his relationship and position as the Gianelli's accountant to convince them to lend him the money. In a civil adjudication of the matter, it was found that Moyer obtained the money by "actual fraud and false pretenses." Respondent did not repay the money.

At the time of the loan, respondent had a history of defaulting on financial obligations. Among the unpaid debts which existed prior to the loan were loans to:

- Elizabeth Albright (\$15,000, loaned in 1986; after suit, Albright was awarded \$20,269 plus attorney fees and costs);
- Dale and Kristy Eversole (awarded \$8,905 related to a loan they made to Moyer);
- Gillian/Craig Associates, Inc. (judgment of \$14,349); and
- J. Andrew Krake (awarded \$19,186 in satisfaction of loan made to Moyer).

12. As a result of the conduct described in paragraph 11 above, respondent's license is subject to discipline on each of the following bases:

- 1 a. Dishonesty in the practice of public accounting
2 (Section 5100(c));
3 b. Fraud in the practice of public accounting (Section
4 5100(c));
5 c. Fiscal dishonesty (Section 5100(h) and Rule 60 in
6 combination with Section 5100(f));
7 d. Breach of fiduciary responsibility (Section 5100(h)
8 and Rule 60 in combination with Section 5100(f));
9 e. Obtaining money by fraudulent means or false
10 pretenses (Section 5100(j)); and
11 f. General unprofessional conduct (Section 5100).

12
13 FOR FURTHER CAUSES FOR DISCIPLINE

14 13. Respondent Charles Grady Moyer is subject to
15 discipline under Section 5050 in conjunction with Section 5100 in
16 that he practiced public accountancy during a nine-month period,
17 from November 1, 1991 through August 6, 1992, when his license
18 was in a delinquent status.

19 14. Respondent Charles Grady Moyer is subject to
20 discipline under Section 5100 in conjunction with Section 5150 in
21 that respondent represents himself as being part of Moyer and
22 Quinto Accountancy Corporation, although the corporation is
23 registered neither with the Board of Accountancy nor the
24 Secretary of State.

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1 FOR CAUSES FOR DISCIPLINE OF THE PARTNERSHIP

2 15. Respondent Moyer & Aquinto, CPA's is subject to
3 discipline under Section 5100 in conjunction with Section 5150 'in
4 that Moyer & Aquinto, CPA's used a corporate designation in doing
5 business, which designation was registered neither with the Board
6 of Accountancy nor the Secretary of State.

7 16. In the event that revocation or suspension is
8 imposed upon the license of partner Charles Grady Moyer as a
9 result of these proceedings, said imposition of discipline
10 provides cause under Section 5101 for the discipline of the
11 partnership registration and permit to practice.

12
13
14 PRAYER

15
16 WHEREFORE, complainant requests that the Board hold a
17 hearing on the matters alleged herein, and that following said
18 hearing, the Board issue a decision:

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20 1. Revoking or suspending Certified Public Accountant
21 Certificate Number CPA 26474, heretofore issued to
22 respondent Charles Grady Moyer;
23 2. Revoking or suspending Certified Public Accountant
24 Partnership registration and permit to practice
25 No. PAR 5539;
26 3. Awarding the Board costs as provided by statute;
27 and

4. Taking such other and further action as the Board
deems proper.

DATED: August 7, 1995

Carol Sigmann
Carol Sigmann
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

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